

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0292P

**Gross Income Tax
Fiscal Year Ended 09/30/96**

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ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

II. Tax Administration – Interest

Authority: IC 6-8-1-10-1

Taxpayer protests the interest assessed.

III. Tax Administration – Collection Costs

Authority: IC 6-8.1-8-2; IC 6-8.1-8-3; C 6-8.1-8-4

Taxpayer has not formally protested the collection costs.

STATEMENT OF FACTS

Taxpayer, an Indiana corporation, protests penalties, interest and collection costs assessed for fiscal year ended September 30, 1996.

Taxpayer filed its original return on June 3, 1997 with a check for the balance due of \$21,777. On August 14, 1997, the department requested additional information regarding credits applied to the third and fourth quarters of the return. On September 2, 1997, the taxpayer called the tax examiner to advise her that he agreed with the department's records at which time liability number 96-0329680 was

issued for the tax balance due including penalty and interest. Upon review, the department issued liability 96-0329681 for the underpayment of quarterly estimated taxes and liability 96-0329680 for failing to pay ninety percent (90%) of the tax by the due date. Liability 96-0329680 includes \$4500 in tax not paid.

On September 25, 1997 the taxpayer protested liability number 96-0329680 for penalty and interest to which the department responded with a request for the preparation of form IT-2220 on September 29, 1997. No IT-2220 return was filed to prove the assessment in error. The letter indicates a protest to the civil penalties for the underpayment of quarterly estimated income tax as the taxpayer states it paid one hundred percent (100%) of the prior year tax liability. Taxpayer also protested the interest computation and states that interest should be calculated from the date of extension to the actual date the final tax liability was paid. Liability number 96-0329681 for the underpayment of estimated quarterly income tax was also issued as the taxpayer did not meet the exception to the penalty for each quarter.

On January 27, 1998 a temporary hold was placed on liabilities 96-0329680 and 96-0329681 and on March 18, 1998, a written protest for both liabilities was received. On March 13, 2000 the taxpayer representative was present for a hearing on the matter.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer protests the penalty assessed but did not list the liability number. The department addressed the penalty for liability number 96-0329680 which was noted in taxpayer's letter. Taxpayer no longer protests the penalty for liability number 96-0329680. The department now addresses the civil penalty for liability number 96-0329681.

IC 6-3-4-4 (c) states:

Every corporation subject to the adjusted gross income tax liability imposed by IC 6-3 shall be required to report and pay quarterly an estimated tax equal to twenty-five percent (25%) of such corporation's estimated adjusted gross income tax liability for the taxable year, less the credit allowed by IC 6-3-3-2 for the tax imposed on gross income. Such quarterly estimated payment shall be made at the same time and in conjunction with the reporting of gross income tax as provided for in IC 6-2.1-5. The department shall prescribe the manner and forms for such reporting and payment.

IC 6-3-4-4 (d) states:

The penalty prescribed by IC 6-8.1-10-2(b) shall be assessed by the department on corporations failing to make payments as required in subsection (c) or (f). However, no penalty shall be assessed as to any quarterly payment which equals or exceeds twenty percent (20%) of the final tax liability for such taxable year, or as to any

quarterly payment which shall equal or exceed twenty-five percent (25%) of the final tax liability for the taxpayer's previous taxable year. In addition, the penalty as to any underpayment of tax on a quarterly return shall only be assessed on the difference between the actual amount paid by the corporation on such quarterly return and twenty-five percent (25%) of the corporation's final adjusted gross income tax liability for such taxable year.

Taxpayer was asked to provide an IT-2220 on January 15, 1998, which was never received. The department prepared the form and found that the taxpayer failed to meet the exception in the first three quarters. On September 4, 1997 the department issued its proposed assessment for the tax balance, penalty, and interest. Penalty was calculated at ten percent (10%) for the \$21,777 payment made on June 3, 1997 and the \$4,500 payment not yet made. The penalty was assessed because less than ninety percent (90%) of the expected tax due was not paid by the original due date.

Additional arguments presented by the taxpayer include its reliance on its payments of one hundred percent (100%) of the prior year's tax liability. Taxpayer states its 1995 liability was \$15,046 and it paid \$15,328 in 1996 thereby meeting the exception.

IC 6-8.1-6-1 clearly states that at least ninety percent (90%) of the tax that is reasonably expected to be due must be paid on or before the due date or penalties may be imposed for failure to pay the tax.

FINDING

Taxpayer's protest is denied. Ninety percent of the tax due was not paid by the due date.

II. Tax Administration - Interest

DISCUSSION

Taxpayer protests the interest assessed on Liability 96-0329680 and states the calculation is in error as interest is to be calculated from the date of extension to the actual date the final tax liability was paid. Further it states the time period was January 15, 1997 through July 15, 1997 which amounts to only 182 days instead of the 620 days listed.

Taxpayer only looked to the final payment in the amount of \$21,777 when calculating interest.

The balance due on liability number 96-0329680 dated September 4, 1997 includes interest from the date the payment was due which includes the fourth quarter tax payment not paid in the amount of \$4500. According to Indiana Code 6-8.1-8-1.5, payment is first applied to penalty, interest, and then the tax. Taxpayer had a tax balance due of \$4500, plus penalty in the amount of \$2,627.69 and interest of \$930.18 at 9/4/97, which is correctly calculated.

In addition, the final payment in the amount of \$21,777 was not made until June 3, 1997. Interest is calculated at \$580.52 from January 15, 1997 to June 3, 1997.

FINDING

Taxpayer's protest is denied

III. Tax Administration – Collection Costs

DISCUSSION

Although the taxpayer has not specifically addressed the issue of collection costs, the department makes its determination based upon information contained in the file.

Taxpayer protested liability number 96-0329680 on September 25, 1997 and in the body of the letter protested a dollar amount. No mention of liability number 96-0329681 was made in telephone conversations nor when the liability reached the various collection stages. Not until after the liability reached the WAR-F stage was there an effort made to contact the department. In taxpayer's conversations with Michelle Haberman a user hold was placed on both liabilities in order for the taxpayer to provide additional information. Liability number 96-0329681 was then already in WAR-F (at 01/22/98) and not until March 13, 1998, did the taxpayer request in writing that holds be placed on both liabilities. Liability number 96-0329681 reached various collection stages and taxpayer never responded until the War-F was issued. Taxpayer failed to respond to ensuing notices for the liability and should have called and/or written the department when the AR-40 on November 24, 1997, the War-C on December 30, 1997, the War-S on January 15, 1998 and the War-F on January 22, 1998 were issued. The taxpayer did not respond to the additional collection efforts expended by the department until the liability reached the War-F stage.

The liability had no holds placed, as taxpayer's letter did not mention the liability number and taxpayer failed to contact the department regarding the liability until March 1998.

FINDING

Taxpayer's protest is denied. Taxpayer never responded to collection efforts for Liability number 96-0329681 nor advised the department that two liabilities were in contention.

CONCLUSION

Taxpayer's protest is denied for all three issues.

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